

**From:** Surge02@aol.com@inetgw  
**To:** Microsoft ATR  
**Date:** 1/6/02 4:54pm  
**Subject:** Microsoft Settlement

**Bennett Fisher**  
**Johns Hopkins University**  
**1/6/02**

## **Microsoft Settlement**

Bill Gates is one of the greatest business leaders in the history of our capitalist country. He helped Microsoft gain monopolistic power by using great business tactics and had the power to use anticompetitive acts to preserve it. In *United States v. Microsoft*, remedies are needed in order to lessen Microsoft's control and increase competition. The remedies that the government proposed are solid, but still allow Microsoft to act anticompetitively. Noticing this lack of enforcement, Microsoft jumped on the government's proposal. They even offered to donate equipment and programs to needy schools in order to cover up their excitement and show some remorse. The only effective solution in this case is to have Microsoft license their technology to competitors. This will avoid further problems and make consumers better off.

By producing a Windows operating system that is cheaper, more prevalent, and has more capabilities and potential than any other operating system yet developed, Microsoft was able to capture an incredible amount of the market share. More specifically, Microsoft controlled an impressive 95% of the market. The court hearings and proceedings stemmed not from the fact that they had this power, but from their actions taken in order to maintain and preserve it. More important than the anticompetitive acts themselves is the realization that this type of market structure alone produces power in that it creates natural barriers of entry. These natural barriers result from the preferences of developers to work for an operating system with a strong consumer base.

It is well known that Microsoft is a monopoly and controls enough market power to effectively be considered one. Therefore, that is not an issue that needs to be discussed. The reason it is mentioned is that the more of the market that Microsoft controls, the more power they have to dictate prices or exclude competition. In other words, they have the ability to engage in anticompetitive acts in order to maintain their power. As a direct result, the government's main objective in proposing remedies was to lessen Microsoft's control over the market and allow other software makers to compete. More specifically, they wanted to discourage Microsoft from developing software that other companies had already developed for the Windows operating system and they wanted to stop Microsoft from forcing dealings through exclusionary acts.

The remedies proposed by the government were not done so in order to knock Microsoft completely out of the market. With the hope of giving all software developers a fair chance, the government's proposal has good core ideas, but lacks execution. One of the proposals assures that competitor manufacturers and software vendors remain free to offer and support non-Microsoft software without the fear of punishment by Microsoft. In other words, they can bundle Netscape and other non-associated explorers to the Windows operating system. By giving competitors the freedom to choose which software is built in, they control how the technology evolves. The government's proposal also states that Microsoft is not permitted to retaliate against software or hardware vendors that are developing, using, distributing, permitting, or supporting any software that competes with Microsoft. But, because of the wording in these proposals, Microsoft can bypass this. For example, they can retaliate against developers or vendors that are not competitors. In addition, what constitutes retaliation? If Microsoft produces a

program for windows that has already been designed to work with windows, is that considered retaliation? Even the three person technical committee established to prevent these problems is useless here because the power is based on their personal interpretation of the decree. As a result, the decree does nothing to establish a more efficient or direct way to control Microsoft. It appears to almost rely on the good faith of Bill Gates and Microsoft; the same brilliant and cunning CEO that helped his company become the powerhouse in the industry and will do anything to ensure that it stays there.

The government was correct in its intentions, but the language in which the proposal was written does nothing to alleviate Microsoft's grasp of market. In fact, this slap on the wrist by the government and the generous donations by Microsoft to needy education systems only help make its future more promising. The supposedly altruistic donations by Microsoft are in response to consumer class-action lawsuits. But, by donating refurbished equipment to poor school systems, Microsoft will enhance its competitive advantage in schools while doing little to meet their true extensive needs. Apple further argued that this would extend Microsoft's monopoly power, the problem that prompted the lawsuits in the first place.

Because of the nature of the subject, technology, control over the industry has a history of changing hands. Microsoft was an exception. They were able to maintain their power through natural barriers of entry and exclusionary acts. Although they have already been found guilty of this and their future actions will be watched closely, the damage is already done. Software companies prefer to produce programs for an operating system like Windows that is already established. Gate's timing was impeccable and as a result Microsoft will reap the benefits far into the future. As it is

commonplace in this industry for any one company to have the majority of control at any given time, why not just let Microsoft enjoy its time at the top? First off and most importantly, the actions by Microsoft made consumers worse off. Secondly, there is a utilitarian way to handle this situation that will make everyone better off. Finally, the way in which they maintained this power is illegal.

Because of the government's inability to enforce the remedies, harsher remedies are needed in order to restore competition. A mandatory licensing of Microsoft's operating system technology would prove an ideal solution to this problem. More specifically, competitors such as Novel or IBM can bid and obtain a license from Microsoft. Using Microsoft's technology, they could add to and create a completely new system. For example, IBM could market Windows XP under their own trade name by obtaining a license and paying maybe 5% to Microsoft. This license fee needs to be set ahead of time so that there are no allegations of discriminatory actions. By doing this, Microsoft could remain at the top, but it now gives other companies a chance to survive and compete. As companies use Microsoft's technology they will gain support and Microsoft's market share will decrease. Since control over the market is directly related to the ability to control prices or exclude competition, Microsoft will not be able to engage in anticompetitive acts. As Microsoft's power over the market decreases, they will gain the additional license fee for the use of it's operating system. The natural barriers of entry will subside as other companies begin to gain popularity and consumers and producers spread out.

This idea has a few very beneficial effects. First, it avoids a potential breakup by Microsoft. There is no need to break up the company's assets and destroy the very thing

that makes Microsoft so unique. Although the proposed breakup of Microsoft would allow for more competition, a licensing agreement has the same effects without the disruptions. In other words, it levels the playing field without the costs. Second, Microsoft's software producers and engineers are not restricted from continuing to make new programs. Therefore, as Microsoft continues to develop new systems, other companies will use this to develop their own and both will excel. Overall, everyone is better off and consumers will see an increase in the quality of products available.

So why is this a better idea than the one proposed by the government? First, it addresses and eliminates the main problem, Microsoft's hold on the market for all Intel-compatible PC operating systems. In addition, there is no vague language in which Mr. Gates could cleverly bypass. Finally, there is no need for a committee or donations or any of the other things that make this case more complicated than it needs to be.

The only issue that could be brought against this idea is the possibility that another company could design a more productive operating system. Companies would then compete fiercely for that top spot. This is analogous to the video game industry in which every couple of years Nintendo, Sony, and few other major manufacturers release their respective systems within a couple of weeks of each other. This competition pushes them to produce better products and therefore enhances the well being of the consumers. This is exactly the goal of the licensing agreement with Microsoft.

While Microsoft has already settled this case with the Justice Department, its problems are not over. Or are they? Microsoft is still under investigation by the European Commission for failing to disclose information to its competitors concerning operating systems for personal computers and servers and that it engaged in the

discriminatory licensing of its technology. All of these problems would be taken care of if the government would adopt an overall licensing agreement. This would allow all information to be available for a fee and charge the same prices to everyone.

As has been shown, the current remedies proposed for Microsoft are not efficient and will not end the long-standing problem. If the government considers the possibility of a licensing agreement they would realize that this is a much better solution.